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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/828,662	04/05/2001	Larry J. Wilson	4660/5000	5703

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EXAMINER

SAETHER, FLEMMING

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 08/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/828,662

Applicant(s)

WILSON, LARRY J.

Examiner

Flemming Saether

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 15-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 15-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Claim Rejections - 35 USC § 112

Claims 1-10 and 15-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are not proper article claims in that they do not define the invention in a steady state. Indeed, the claims define two separate articles (the cap and the insert) then include a method limitation wherein the body is press fit into the insert such that in the assembled state, one of the articles is no longer in the configuration as defined. Specifically, the cap is defined as having an internal cylindrical dimension less than that of the cylindrical surface of the body yet when in the assembled state, the dimensions would have to be equal. The two separate configurations (or states) of the cap cannot co-exist because in the assembled configuration the internal cylindrical dimension of the cap would not be less than that of the cylindrical body portion. The claims were examined as best understood with the device being in the assembled configuration.

Claim Rejections - 35 USC § 102

Claims 1, 6, 8, 10, 19/1 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Baltzell. Baltzell discloses a decorative cap (12) on an insert (10). The insert includes a polygonal portion (16) and a cylindrical portion (28). The cap includes a polygonal (30) and cylindrical (36) portion conforming to those of the insert. The cylindrical portion of the insert is received in the cylindrical portion of the cap such that there is contact through a full 360° thus inherently forming at least a slight interference

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fit and, the cap is further crimped (at 52). The insert is furthermore provided with a coating (50).

Claim Rejections - 35 USC § 103

Claims 2-5, 9, 15-18, 19/15-17, 20/15 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baltzell. Baltzell does not disclose the specific dimensions and materials as claimed. The examiner contends that the dimensions claimed would have been recognized depending upon the materials and use of the invention furthermore; there is no criticality to the dimensions and materials.

Allowable Subject Matter

Claim 7 continues to be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's amendments to obviate the 112 second paragraph rejection falls short because it fails to correct the fundamental problem associated with the claims. The claims are attempting to define an article in terms of how it is made by defining the condition of the members prior to assembly (the cylindrical portion of the cap having a smaller dimension than the cylindrical portion of the body) and then defining the method of assembly ("deformed"). This is improper in an article claim. As mentioned above it is

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unclear what exactly is the article applicant intends to claim because an article in and of itself would not be inclusive of any method. In any event, it is the final product which was considered for patentability. See In re Marosi, 218 USPQ 289 (Fed. Cir. 1983).

Applicant argues the rejection based upon the prior art contending that Baltzell does not disclose an interference fit between the cylindrical portion of the cap and body. In response, the examiner maintains that the disclosed 360 degree contact in Baltzell would provide an interference fit. The contact around the entire perimeter would have to provide some sort of interference fit otherwise there would be no contact. The fact that it may slide would not preclude an interference fit in fact; the sliding is generally how mating members with an interference fit are initially connected.

Applicant argues that the glue present in Baltzell teaches away from the interference fit. In response, the examiner disagrees because the glue is supplemental to a mechanical fastening (column 2, last line) and is for eliminating rattle and corrosion resistance.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Romano is cited to show a wheel cap held by an interference fit and Dunbar is cited to teach the equivalence of an interference fit and other attachment methods.

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THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Flemming Saether whose telephone number is 703-308-0182. The examiner can normally be reached on Monday through Friday.


Flemming Saether
Primary Examiner
Art Unit 3627

July 30, 2002